

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CARLOS NEWELL,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

**MOTION TO VACATE
28 U.S.C. § 2255**

**CRIMINAL ACTION FILE
NO. 1:16-CR-360-MHC**

**CIVIL ACTION FILE
NO. 1:24-CV-3513-MHC-RDC**

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge [Doc. 78] recommending that Movant’s Motion to Vacate, set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 be denied without prejudice for lack of jurisdiction. The Order for Service of the R&R [Doc. 79] provided notice that, in accordance with 28 U.S.C. § 636(b)(1), Movant was authorized to file objections within fourteen (14) days of the service of that Order. No objections to the R&R have been filed within the permitted time period.¹

¹ It is noted that the copy of the R&R mailed to Movant was returned as “refused” and “unable to forward.” [Doc. 80.] “The failure . . . of a party appearing *pro se* to keep the clerk’s office informed of any change in address and/or telephone number which causes a delay or otherwise adversely affects the management of the case shall constitute grounds either for dismissal of the action without prejudice or for entry of a default judgment.” LR 41.2(B), NDGa.

Absent objection, the district court judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” 28 U.S.C. § 636(b)(1). Based upon the absence of objections to the R&R, in accordance with 28 U.S.C. § 636(b)(1), the Court has reviewed the R&R for plain error. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983). The Court finds no plain error and that the R&R is supported by law.

Consequently, the Court **APPROVES AND ADOPTS** the Report and Recommendation [Doc. 78] as the Opinion and Order of the Court. It is hereby **ORDERED** that Movant’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Doc. 76] is **DENIED WITHOUT PREJUDICE** for lack of jurisdiction.

It is further **ORDERED** that a certificate of appealability is **DENIED** because Movant has not met the requisite standard. Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Movant may not appeal the denial of his motion but may seek a certificate from the United States Court of Appeals for the Eleventh Circuit under Federal Rule of Appellate Procedure 22. Rule 11(a), Rules Governing § 2255 Proceedings for the United States District Courts.

The Clerk is **DIRECTED** to close the civil case file.

IT IS SO ORDERED this 4th day of October, 2024.



MARK H. COHEN

United States District Judge